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October 16, 2017

VIA FCC ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

*Re: In the Matter of Accelerating Wireless Broadband Deployment by Removing
Barriers to Infrastructure Investment and Accelerating Wireline Broadband
Deployment by Removing Barriers to Infrastructure Investment
WT Docket Nos. 17-79 and 17-84
- Ex Parte Communication*

Dear Ms. Dortch:

This firm represents the Colorado Communications and Utility Alliance (Colorado Chapter of NATOA) ("CCUA"), Rainer Communications Commission ("RCC"), Cities of Seattle and Tacoma, Washington, King County, Washington, the Jersey Access Group (New Jersey Chapter of NATOA) ("JAG"), and the Colorado Municipal League ("CML"). Our clients have filed Comments and Reply Comments in WT Docket No. 17-79 and Reply Comments in WT Docket No. 17-84.

On October 12 and October 13, 2017, I, along with Bob Fifer (Arvada, Colorado Mayor Pro Tem), Javier Figueroa (University Place, Washington Mayor and RCC Chair), Julie Martinez (Deputy Director, Office of Telecommunications and Denver 8 Television, City and County of Denver, Colorado) and Jon Reynolds (Engineering Supervisor, Public Works Engineering, Regulatory and Analytics, City and County of Denver, Colorado) attended meetings at the Commission with the following FCC Staff:

October 12, 2017

Claude Aiken, Legal Advisor-Wireline
- Commissioner Clyburn Staff

Commissioner Carr
Kevin Holmes, Acting Legal Advisor for Wireless and Public Safety
- Commissioner Carr Staff

Jay Schwarz, Wireline Advisor
- Chairman Pai Staff

October 13, 2017

Commissioner O'Rielly
Amy Bender, Legal Advisor - Wireline
- Commissioner O'Rielly Staff

Lisa Hone, Associate Bureau Chief
Michael Ray, Esq., Internet, Technology and Telecommunications Law
Negheen Sanjar, Legal Intern
- Wireline Competition Bureau

Garnet Hanly, Division Chief
Jeffrey Steinberg, Deputy Chief
Paul d'Ari, Deputy Division Chief
Mary Claire York, Legal Advisor
- Wireless Telecommunications Bureau

The following Commission Staff members participated in the meeting by telephone:

Adam Copeland, Assistant Division Chief
Michele Berlove, Attorney Advisor
- Wireline Competition Bureau

Erica Rosenberg, Assistant Chief
- Wireless Telecommunications Bureau

In these meetings, we reiterated our clients' positions outlined in their Comments and Reply Comments. Additionally, during our meeting with representatives of the Wireline Competition Bureau and Wireless Telecommunications Bureau, Ms. Hanly asked us to submit an example of a model license agreement for small cells that CCUA has worked on and that is now being replicated with other communities throughout the State of Colorado and Mobilitie. That model agreement is attached, along with additional summary documents that we presented at the meetings.

Pursuant to Rule 1.1206 of the Commission's Rules, an electronic copy of this letter and the attached summary documents are being filed via the Electronic Comment Filing System (ECFS) in this matter.

Please feel free to contact me with any additional questions or concerns you may have.

Very truly yours,
KISSINGER & FELLMAN, P.C.



Kenneth S. Fellman
kfellman@kandf.com

KSF/eaj

Enclosure

cc: Bob Fifer, Arvada, Colorado Mayor Pro Tem
(Email: bfifer@arvada.org)
Javier Figueroa, University Place, Washington Mayor and RCC Chair
(Email: JFigueroa@cityofup.com)
Julie Martinez, Deputy Director, Office of Telecommunications/Denver 8 Television
(Email: Julie.Martinez@denvergov.org)
Jon Reynolds, Engineering Supervisor, Denver Public Works Engineering
(Email: Jon.Reynolds@denvergov.org)
Chairman Pai (Email: ajit.pai@fcc.gov)
Commissioner Clyburn (Email: mignon.clyburn@fcc.gov)
Commissioner O'Rielly (Email: michael.orielly@fcc.gov)
Commissioner Carr (Email: brendan.carr@fcc.gov)
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Mary Claire York (Email: maryclaire.york@fcc.gov)
Erica Rosenberg (Email: Erica.rosenberg@fcc.gov)

October 2017

Small Cell Collaboration in Denver



The City and County of Denver has formed collaborative relationships with wireless companies to efficiently and responsibly permit installation of small cell infrastructure.

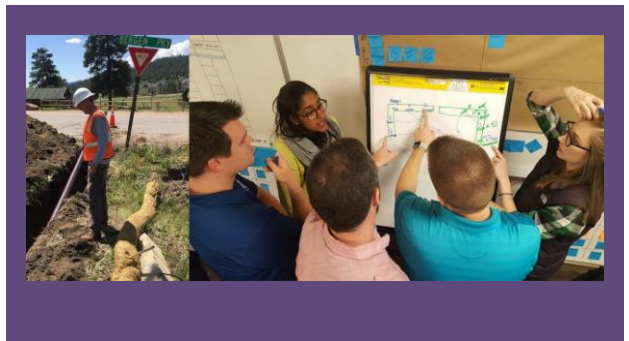
Denver's success in collaboration

Denver's innovative approaches to collaboration are unique to the City and have resulted in addressing industry needs with local needs.

Denver Public Works has collaborated with executive management from each wireless provider about their proposed infrastructure programs. This has helped to ensure that each provider approaches the City in a consistent manner, and that the City's current procedures are understood at the outset. Design standards and approval processes have also been standardized through this collaboration with each provider. The City has already experienced much benefit to close collaboration with parent companies, reducing burdens for retraining sub-contractors for complete applications. Our collaboration has also evolved opportunities for deploying the latest techniques and pilot projects towards consolidating ROW infrastructure.

Denver's permitting integrates opportunities

Denver Public Works has established an innovative plan review and batch permitting program for Small Cell applications that combine several necessary City permits into one contiguous process. This timely system ensures that each Small Cell application follows the same procedures and standards as any other user of the public right of way, minimizing City processing and administration labor while maximizing opportunities for responsible siting and collaborating on mutual smart-City benefits.



Testimonials from Carriers



"Denver Public Works has worked closely with (*Carrier A*) as they've developed a new program to address small cell infrastructure and city growth. As a result of their efforts, the City now has a well-planned and comprehensive small cell permitting program that addresses current and future connectivity needs, which is the first step toward encouraging innovation and investment, and toward becoming a connected "smart" city."

"(*Carrier B*) is proud to be actively working with the City and County of Denver as we develop broadband communications infrastructure in the right of way. It's clear that your office and other permitting bodies understand the complexities behind providing this necessary equipment in densely populated areas and have been able to balance both public interest and industry needs. Your progressive approach to processing our permit applications provides a pathway to success and gives us clear boundaries as we create our designs. We look forward to working with your department as we develop our network throughout our beautiful City."

Small Cell Infrastructure in Denver



The City and County of Denver is receiving growing numbers of requests from wireless providers and wireless infrastructure companies to construct small cell facilities in the public right of way.

What are Small Cell facilities?

- Small Cell facilities are low-powered antennas that provide cellular and data coverage to smaller geographic areas, supplementing the larger cellular network.
- Small Cell equipment is proposed to be located on poles, wires, or buildings.
- Small Cell equipment is allowed in the public right of way per Federal and State Law just like other utilities.
- Small Cell equipment will initially meet current 4G (LTE) voice and data demands, but we understand it may be modified with future 5G higher speed equipment as technology changes.

What is the role of Denver Public Works related to Small Cell infrastructure?

- Denver Public Works reviews applications for Small Cell equipment in the public right of way.
- Requests for Small Cell equipment on new freestanding poles are processed as Encroachment Permits. State law requires the City to process applications in batches (currently 10 poles or less per application), and in 90 days or less.
- Denver Public Works is working with each proposing carrier to standardize the physical and aesthetic appearance of equipment as much as possible.
- Denver Public Works is having success requesting that applicants limit the height of new freestanding poles to less than 35 feet, similar to existing street lighting in the public right of way.
- Denver Public Works is encouraging co-location of new equipment onto existing poles and infrastructure in the public right of way wherever possible.

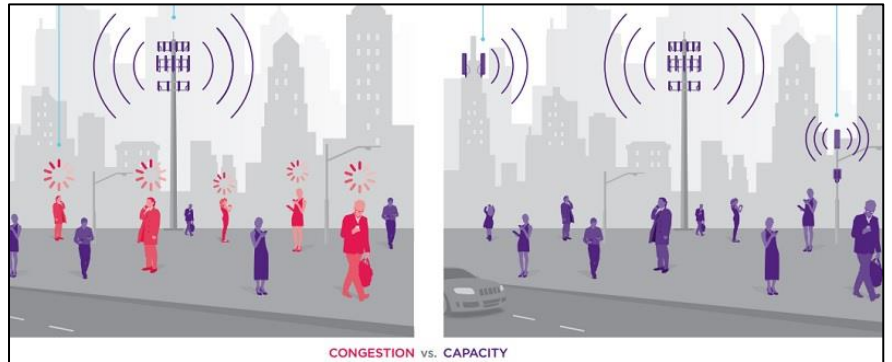


Small Cell Infrastructure is coming to Denver

Here's the current state of Small Cell technology, as we understand it from the wireless carrier industry.

1. Why are we seeing a surge in interest to install wireless infrastructure?

Researchers say mobile data traffic in North America has grown significantly, and is projected to continue increasing at a rapid rate with the proliferation of mobile devices. In our City there has been a surge in population and economic growth, and wireless carrier companies are indicating that existing infrastructure is becoming congested and cannot continue to meet the demands of their customers.



Source: Crown Castle

2. What type of infrastructure is proposed?

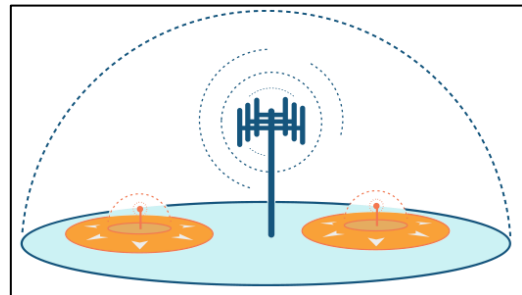
Wireless carrier companies have indicated that until recently, wireless phone service in general has been managed using large antennas mounted on towers located on both public and private property. Those antennas serve relatively large areas, or "cells" up to several miles away. Carriers have explained to the City that existing cell sites are already becoming congested and that installing more cell towers covering large areas will not keep up with projected demand for high speed wireless data that is growing rapidly.



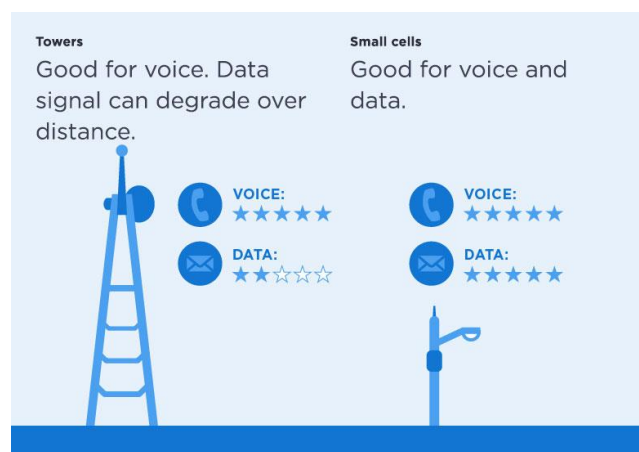
Typical large cellular antenna.

Credit: Joe Ravi via Wikimedia Commons

To meet demands for wireless data, carriers have begun using new lower-powered antenna technology to "offload" data traffic from the larger cell towers. Each of these smaller antennas serves a much smaller area (1-2 blocks) but with much higher data volumes. This type of wireless infrastructure is referred to as "Small Cell."



Source: Qualcomm Technology



Source: Crown Castle

Small Cell antenna equipment is typically the size of a suitcase and must be under 20 cubic feet in total volume according to State law. The types of equipment and method of deployment being proposed in Denver will vary widely and depend upon the network needs and technology requirements of the various wireless carriers. Typical antenna locations are expected to be:

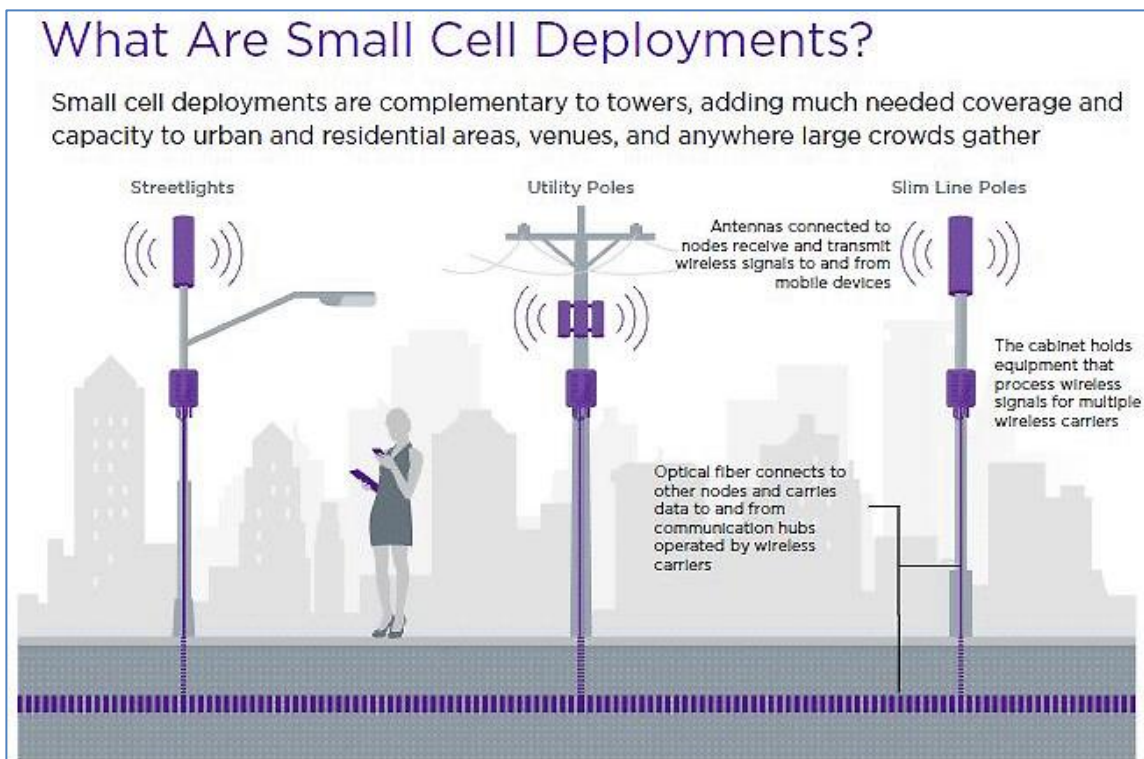
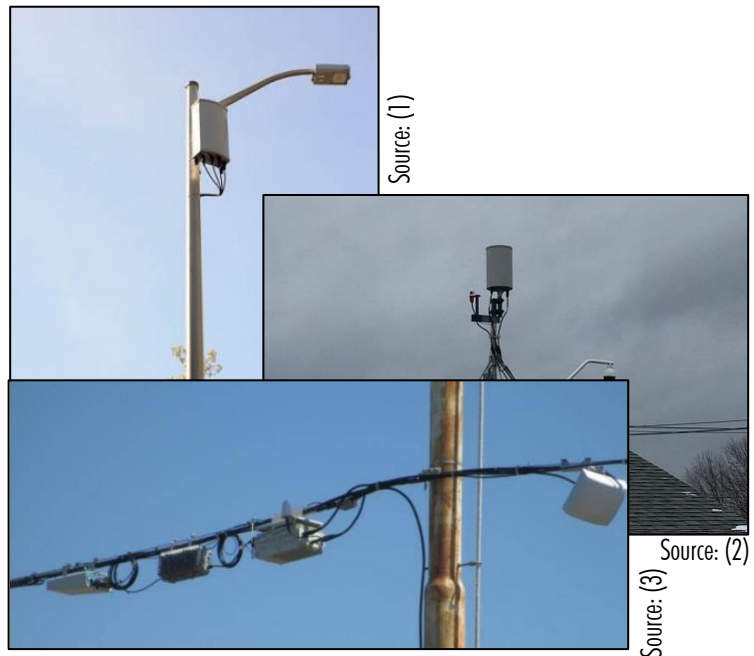
- Mounted onto existing utility or street lighting poles.
- Placed onto new freestanding poles erected in the public right of way.
- Strung on wires between existing poles.
- Mounted onto existing buildings on public and private property.

There are an estimated 60,000 plus Small Cell units already operating nationwide. Requests for Small Cell antenna installations in the City of Denver are expected to rise in the coming months as wireless companies work to meet the increasing wireless data demands of their customers. We understand hundreds, if not thousands, of additional Small Cell antennas may be proposed in Denver by cellular carrier companies.

It appears that most new infrastructure being proposed today is servicing current 4G ("4th Generation") cellular and data needs, also known as "LTE". However, wireless carriers are already preparing plans for imminent 5G ("5th Generation") wireless networks, expected to service even higher speed data from densely placed antennas.

3. Types of Applicants

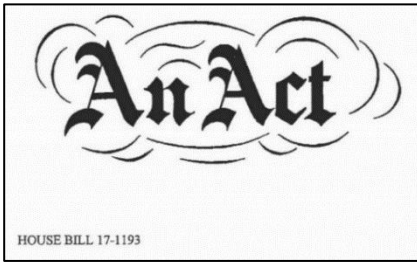
Denver has learned that the companies that intend to build Small Cell infrastructure follow different business models. Some companies will construct their own infrastructure to service wireless demand from their own customers (AT&T and Verizon Wireless, for example). Other companies will construct wireless infrastructure and then lease or sell service to wireless providers that do not wish to construct and own their own equipment (Crown Castle for T-Mobile, and Mobilitie for Sprint, for example).



Source: Crown Castle

Photo Sources: (1) scientists4wiredtech.com; (2) steelintheair.com; (3) wade4wireless.com

4. Federal and State Law on Small Cell Infrastructure



Wireless infrastructure is subject to the parameters of Federal Communications Commission (FCC) and State law. In addition to FCC requirements surrounding wireless radio placement and transmissions, the State of Colorado recently approved a new law in March of 2017 that establishes that wireless providers have the legal right to locate Small Cell equipment in the public rights of way of Colorado.

The new State law is specific that municipalities may not entirely deny or discriminate against Small Cell infrastructure, treating the equipment in the same way as other permitted users of the right of way. However, Denver still maintains the authority to

regulate new Small Cell equipment based on public health, safety, and welfare, and deny or require change to proposals that conflict with other uses of the public right of way or are otherwise unlawful.

Immediately following the passage of the State House Bill, the City experienced interest from multiple companies (see last page of this handout) and has received numerous applications for Small Cell equipment in the public right of way.

5. Why can't Small Cell equipment just be placed on current poles?

Of note, the City and County of Denver does not own or maintain most existing street lighting, utility, or traffic signal poles in the public right of way. The majority of these current poles are owned and maintained by Xcel Energy or other utility companies.

For years, Xcel and other utility companies have allowed the mounting of cellular equipment onto utility poles, and there are many existing examples throughout Denver. These locations are preferred for wireless networks as they are already standing, are of adequate height for antennas, and have electrical power nearby. However, space on utility poles is scarce, and becoming increasingly eliminated as poles are removed when unsightly overhead lines are relocated underground.

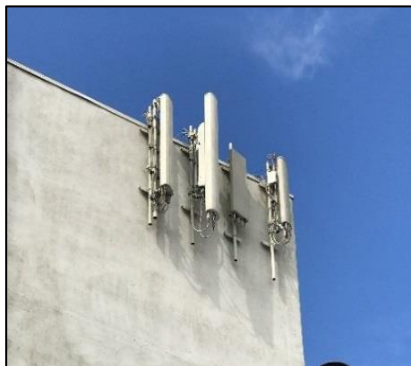


Just recently, Xcel Energy announced its intention to allow companies to attach (or "co-locate") Small Cell equipment onto existing street light poles in Denver. There are over 52,000 such poles throughout the City; however, it is unknown how many could possibly support additional equipment or be replaced with a pole/ light combination. The City understands that it each company must reach final agreement with Xcel Energy for co-locating, then work with Xcel to review and approve individual pole locations. Some street light locations that are not capable of accepting new equipment may be removed and replaced with a combination street light/ antenna pole.



Xcel Energy also owns and maintains most of the traffic signal poles in Denver (typically located at street intersections). The City of Denver has an exclusive agreement with Xcel Energy to locate signal, emergency response, and other municipal equipment (cameras, etc.) on traffic signal poles. The City is carefully evaluating whether it will be possible to allow additional wireless infrastructure on these poles without conflicting with current traffic or safety equipment.

6. Why can't cellular infrastructure be located on private property?



A quick glance around most parts of Denver will reveal many cellular antennas already located on private property. However, because of the complexities and length of time to create agreements with individual property owners, many companies have disclosed to the City that it is not feasible to deploy Small Cell equipment in this manner and still meet current data demands.

If and when a company identifies a good location for mounting Small Cell equipment on private property, it will be regulated by the City's Community Planning and Development Division using requirements of the current Denver [Zoning Code](#). The Zoning Code includes parameters for height, size, placement, etc. on private property to preserve the intent and character of the zoning district. Zoning Code requirements do not apply in public right of way.

7. Why can't cellular infrastructure be combined onto one pole?

For now, the City understands that the siting of Small Cell antennas is dictated by the wireless provider and its customer's needs, terrain, and radio frequency modeling results. Each wireless provider has different objectives and may not need the same locations. Each carrier, who owns rights to a spectrum of operating frequency, states that some separation with competing antennas is necessary to avoid signal interference.

With that said, the City understands that Small Cell technology is evolving rapidly towards the ability to share antennas or even poles between multiple carriers. The City is exploring all options and is encouraging pilot programs that demonstrate how the equipment for multiple carriers can be combined into a single pole, with the long-term goal of minimizing the amount of new infrastructure placed in the public right of way.

8. How is the City handling Small Cell infrastructure proposed in the public right of way?

The City is currently reviewing all new pole applications in conjunction with Federal and State law, as well as Denver Rules and Ordinances. Denver Public Works is the responsible entity for permitting any infrastructure, object, or construction in the public right of way of Denver.

Public Works currently performs careful consultation with top executive and program management staff from each wireless provider about proposed infrastructure programs before the provider is allowed to submit any applications for approval. This ensures that each provider approaches the City in a consistent manner, and that the City's current policies and permitting procedures are well known at the outset.

Per State law, the City must allow each company to propose their infrastructure in the public right of way. Additionally, the City must offer permitting procedures that can process "bulk" Small Cell programs in batches, in 90 days or less, rather than requiring individual permits for each pole or antenna.

In response to these requirements, Public Works has established a plan review and permitting program that combines existing Utility Plan Review and Encroachment Permitting into one contiguous process. Each applicant may submit batches of 10 or fewer unique poles or pieces of ground-mounted equipment per application. Each application will result in a revocable Encroachment Permit.



This batch permitting system ensures that each Small Cell application follows the same procedures and standards as any other user of the public right of way, while minimizing City processing and administration labor.

Each Encroachment Permit requires a complete and public-facing plan review process. The City Public Works Department logs each application for review by internal and external stakeholders (such as utility companies, etc.), special Districts, and known neighborhood groups using an electronic plan review website. The City has created procedures that will also ensure the applicant has notified adjacent property owners at each proposed pole location during this process.

Any comments received from the plan review process are accepted and must be addressed by the applicant. Comments that are deemed to have technical merit (identifying unlawful or conflicting proposed infrastructure) are required to be fully resolved by the applicant.

If an Encroachment Permit is issued, the associated batch of new poles is approved to proceed to Right of Way Construction Permitting.

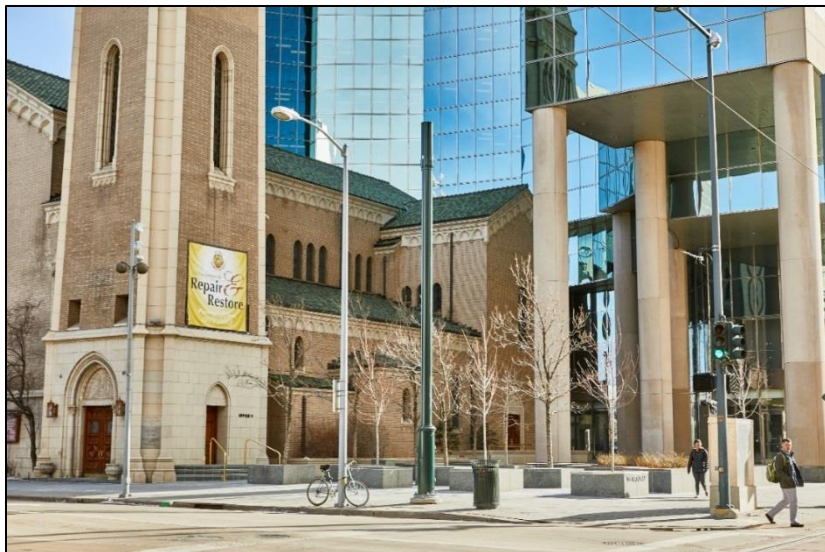
Of note, the very first Encroachment Permit for ground-mounted Small Cell equipment by any Company requires approval by City Council. Additionally, each pole or piece of ground-mounted equipment approved by an Encroachment Permit requires a \$200 annual fee, and every Permit is revocable by the City under specified circumstances.

9. Can the City limit or standardize Small Cell infrastructure?

As mentioned above, the City is currently exploring its policies and ordinances for Small Cell infrastructure within the parameters of Federal and State law. Under current law, it is not clear how the City can restrict height, design, or location (unless conflicting) of Small Cell infrastructure. However, as the City as a whole considers new policies and rulemaking, the City Public Works Department is having success in coordinating expectations and recommendations through enhanced communication efforts at the outset of each company's program. So far each applicant has been receptive to:








- Considering standardizing pole design elements, color, location, etc. to meet intent and character of existing infrastructure in the public right of way.
- Limiting pole heights to match existing street lighting and other poles in the public right of way.
- Generally avoiding placing poles adjacent to parks and historical places.
- Encouraging pole and equipment designs that enclose as much equipment as possible to minimize visual impact.
- Co-locating equipment onto existing infrastructure wherever feasible.
- Installing consistent infrastructure that does not discriminate based on neighborhood type, demographic, or character.
- Exploring new concepts in combining equipment from multiple companies into single poles.

Public Works has placed top priority in coordinating design elements for proposed Small Cell infrastructure, and how companies should maximize aesthetics while minimizing congestion of the public right of way. Below are several examples of new Small Cell equipment recently constructed in Denver.



10. Who can I contact?

The City and County of Denver strongly encourages direct communication with the specific wireless provider or company who is installing specific equipment. City and County of Denver staff is also available to discuss processing and policy related questions. The following list of contacts that have approached the City so far is provided for your convenience:

NAME	EMAIL ADDRESS	AFFILIATION
Denver Public Works Regulatory: Jon Reynolds	denver.pwera@denvergov.org	
Denver Public Works Communications & Marketing:	pw.comms@denvergov.org	
Verizon Wireless Debbie Essert	Debbie.Essert@verizonwireless.com	
Mobilitie (currently servicing Sprint): Jennifer Johnson	Jennifer.Johnson@mobilitie.com	 
Crown Castle (currently servicing T-Mobile): Scott Harry	Scott.Harry@crowncastle.com	 
Zayo Group: Alec Geist	Alec.Geist@zayo.com	
AT&T Wireless: Liz Walker	Liz.Walker@wirelesspolicy.com	
Xcel Energy Facility Attachments: Tom Breuckman	Tom.Breuckman@xcelenergy.com	

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TO: Chairman Pai, Commissioners Clyburn, O’Rielly and Carr
Rachel Bender, Jay Schwarz, Claude Aiken, Kevin Holmes,
Jeffrey Steinberg, Garnet Hanly, David Sieradzki, Lisa Hone ,
Adam Copeland, Daniel Kahn, Michael Ray, Michele Berlove

FROM: Kenneth S. Fellman, on behalf of Colorado Communications and Utility Alliance
(Colorado Chapter of NATOA); Rainer Communications Commission; Cities of
Seattle and Tacoma, Washington; King County, Washington; the Jersey Access
Group (New Jersey Chapter of NATOA); and the Colorado Municipal League

DATE: October 12 and 13, 2017

RE: Additional materials for meetings related to WT Docket Nos. 17- 79 and 17-84

These materials will be distributed during our meetings with you on October 12th and 13th.
Related to the point that local governments are, for the most part, working well with industry to
promote deployment, and demonstrating, contrary to some statements made in these dockets by
industry that all small cell sites look good and only have minimal visual/aesthetic impact, the
attached photos demonstrate that collaborative efforts are working and without local impact,
significant negative impact to local community character will occur. Any action taken by the
Commission should not eliminate the ability of local government to compel the kind of
development that has occurred in the attached examples of good siting and best practices.

Siting Without Good Planning at the Local Level Leads to Unsightly Results:



Interstate 25 NB, CO Dept. of Transportation, just south of Lone Tree, CO (source: Ken Fellman, Kissinger & Fellman, P.C.)



AT&T Mobility panel antennas along coastal road with wide bundle of cabling below and ground mounted equipment, next to Federal open space land (source: Omar Masry and Robert "Tripp" May, www.medium.com/@omarmasry January 26, 2016)



AT&T small cell site in Oakland, CA (source: Omar Masry)



Zayo proposed colocation site (source: Zayo)



Mobilitie small cell site in Los Angeles, CA (source: Dr. Jonathan Kramer)

Siting when Industry and Localities Collaborative on Design Standards and Processes:



Crown Castle site in Colorado Springs, CO adjacent to Cheyenne Mountain Resort. Ancillary equipment installed underground. (source: Brandon Dittman, Kissinger & Fellman, P.C.)



Seattle City Light hybrid light pole
(Source: AGL Media Group May 16, 2017)



Verizon stand alone small cell in downtown Denver
(Source: Verizon Wireless)



Antenna on pole, equipment in vaults below sidewalk, and vent stacks tucked into landscaping
(source: celltowersites.com)



Verizon Small Cellular Pole near Union Station, Denver
(source: Verizon Wireless)



Initially proposed Mobilitie pole in Denver from Houston, TX. Note external equipment
(source: Mobilitie)

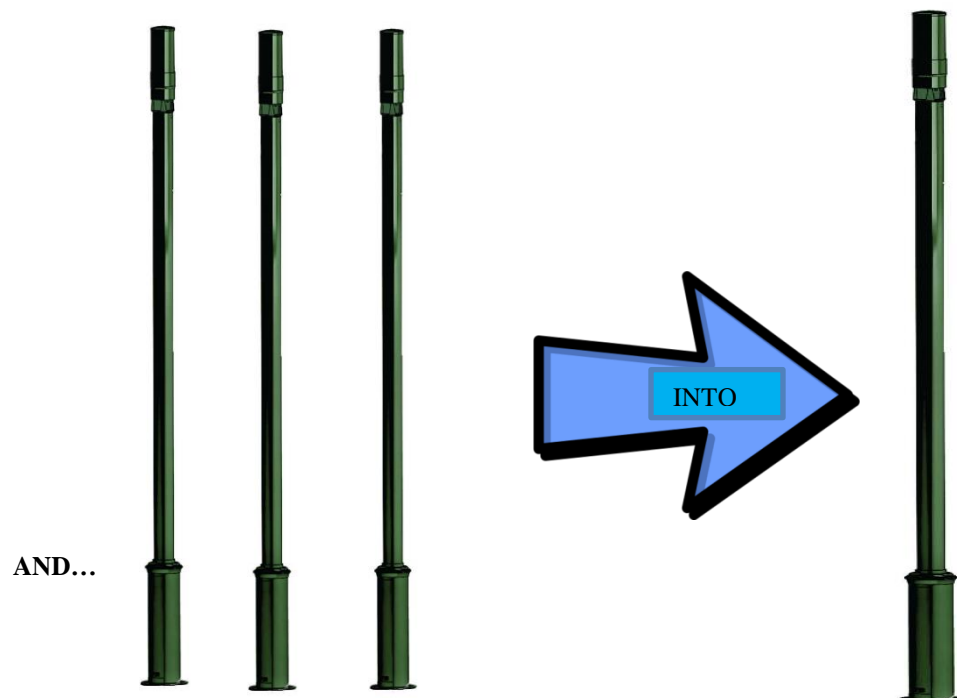


Currently proposed Mobilitie pole design following Denver Public Works coordination. Note fully contained equipment (source: CompTek)

What we Hope Future Collaborative Planning will Result In:



Very possible hybrid Street Light concept in Denver
(source: CompTek)



Very possible multi-carrier pole designs currently being coordinated with carriers.

WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT

THIS WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT ("Agreement") is entered into this ____ day of _____, 201__ ("Effective Date"), by and between the _____, Colorado ("Licensor") and Mobilitie, LLC, a Nevada limited liability company with its principal office located at 660 Newport Center Drive, Suite 200, Newport Beach, CA 92660 ("Company").

RECITALS

A. The Company owns and/or controls, maintains and operates a wireless and fiber communications Network (as defined in Section 1.4 below) that serves Mobilitie's wireless carrier customers.

B. For purposes of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Wireless Communications Facilities in the Public Rights-of-Way (as defined in Sections 1.10 and 1.8, respectively, below).

SECTION 1. DEFINITIONS

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely discretionary.

- 1.1 "Affiliate" means any entity that, directly or indirectly controls, is controlled by, or is under common control with, the Company.
- 1.2 "Applicable Laws" means any statutes, constitutions, charters, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, franchises, administrative orders, certificates, orders, or other requirements of the Licensor or other governmental or judicial authority having the force and effect of law that determines the legal standing of a matter relating to the parties and/or this Agreement.
- 1.3 "FCC" means the Federal Communications Commission.
- 1.4 "Network" or collectively "Networks" means one or more of the wireless and fiber-based communications facilities operated by the Company to serve its wireless carrier customers in [City/Town/County].
- 1.5 "Owner" means a person with a legal or equitable interest in ownership of real or personal property.
- 1.6 "Person" means any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.

- 1.7 “Public Property” means any real property owned by the Licensor other than Public Rights-of-Way.
- 1.8 “Public Rights-of-Way” or “PROW” means the surface, air space above the surface, and the area below any public street, road, highway, freeway, lane, public way, alley, court, sidewalk, boulevard, drive, bridge, tunnel, parkway, or easement now or hereafter held by the Licensor, or dedicated for use by the Licensor, use by the general public, or use compatible with the service or operations of the Wireless Communications Facilities.
- 1.9 “Supplemental Site License” means a document, substantially in the form attached as Exhibit A. Each Wireless Site installation will be subject to a Supplemental Site License.
- 1.10 “Wireless Communications Facility” or “WCF” means a facility used to provide wireless communications services to the public; or wireless backhaul services sold to wireless service providers who in turn provide wireless services to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF includes an antenna or antennas, ancillary equipment, towers, poles and other vertical assets upon which WCFs are installed. “WCF” does not include fiber optic facilities, except to the extent contained on or within the vertical assets.
- 1.11 “Wireless Site” means a location on Public Rights-of-Way selected for the Company’s deployment of Wireless Communications Facilities.

SECTION 2. GRANT OF AUTHORITY

- 2.1 Grant of License. The Licensor hereby grants to the Company, a non-exclusive license to use and occupy the PROW throughout the territorial boundaries of the Licensor, as these boundaries may be adjusted from time to time due to annexations, to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Wireless Communications Facilities identified in each Supplemental Site License. This grant is subject to the terms, conditions and other provisions set forth in this Agreement and all Applicable Laws. The Company shall install its WCFs consistent with the Licensor’s applicable ordinances and regulations. The parties understand and agree that this Agreement is a limited grant of authority subject in all respects to Applicable Law, including without limitation, those regarding the kind, size, height and bulk of structures in the PROW, and further subject to all provisions contained herein, including without limitation, Exhibit C.
- 2.2 Installations on Poles. WCFs owned and/or controlled by the Company may be installed only on (i) Licensor’s traffic signal poles or other Licensor-owned poles in the PROW under the terms of this Agreement, (ii) third-party poles in the PROW under the terms of a fully executed pole attachment agreement with the Owner of such poles, (iii) on street lighting poles in the PROW approved for street lighting purposes by the Licensor that are purchased by the Company and assigned to the Licensor, or (iv) [in conformance with the Licensor’s regulations and ordinances –OR– in instances where no other

reasonable opportunity for attachment exists], on the Company's proprietary poles newly installed in the PROW. The Company shall be responsible for complying with all obligations under this Agreement regarding equipment, irrespective of ownership of or title to such equipment. Subject to the exception described below, all WCFs shall be installed on poles located at Wireless Sites. For attachments of Wireless Communications Facilities in the PROW on structures owned by the Licensor, in addition to all obligations of this Agreement, the Company shall be bound by the requirements contained in Exhibit B, and all applicable Licensor rules and regulations, which may be modified by Licensor from time to time.

- 2.3 License Term. The initial term of this Agreement shall commence upon the Effective Date and shall expire fifteen (15) years from the Effective Date (the "Term"), unless renewed as herein provided in Section 7.2. The term of each Supplemental Site License shall be concurrent with the term of this Agreement; provided, however that the minimum term of a Supplemental Site License shall be five (5) years. If the Term of this Agreement expires before the end of any five (5) year Supplemental Site License term, this Agreement shall remain in effect only with respect to any Supplemental Site License through the end of such Supplemental Site License's term.
- 2.4 Conditions. The rights afforded to the Company under this Section 2 are granted subject to the conditions herein provided, the applicable attachments to this Agreement, and all Applicable Laws.
- 2.5 Non-Exclusive License. The Company's right to use and occupy the PROW and attach to structures therein shall not be exclusive. The Licensor reserves the right to grant a similar use to itself or any Person at any time.
- 2.6 Waiver of Claims. In consideration for the rights granted under this Agreement, the Company waives all claims, demands, causes of action, and rights it may assert against the Licensor and its officials, personnel, agents, and representatives because of any loss, damage, or injury to any Wireless Communications Facilities, or any loss or degradation of service resulting from the installation, operation, maintenance or malfunction of Wireless Communications Facilities regardless of cause, except as provided in Section 5 and except with respect to claims, demands, causes of action and rights the Company may assert against the Licensor and its officials, personnel, agents, and representatives in connection with their negligence and willful misconduct.
- 2.7 No Interest in Public Property or PROW. Nothing under this Agreement shall be interpreted to create or vest in the Company any easement or other ownership or property interest to any Public Property or PROW or constitute an assignment of any Licensor's rights to Public Property or PROW. The Company shall, at all times, be and remain a licensee only.
- 2.8 No Illegal Activity Permitted. The Company shall not use or permit the Wireless Sites or Licensor-owned infrastructure to be used for any activity violating any Applicable Laws.

- 2.9 Sub-Tenants and Sub-Licensees of Company. The parties understand and agree that the Company intends to provide access to the Wireless Sites to its customers through leases, licenses or similar agreements. The Company shall require in its agreements with its customers that its customers agree to be subject to all terms, conditions and obligations of this Agreement as they may relate to the customers' use of the Wireless Sites and that the customers shall further comply with all Applicable Laws.

**SECTION 3. PERMITS, CONSTRUCTION, OPERATION AND
MAINTENANCE IN THE PUBLIC RIGHTS-OF-WAY**

- 3.1 License Requirement/Processing Fees. Each Wireless Site will be subject to a Supplemental Site License pursuant to the terms and conditions of this Agreement. The Company may terminate any Supplemental Site License for convenience at its discretion, subject to all obligations for removal of Wireless Communications Facilities, restoration of the Wireless Site and any other applicable conditions of law related to such termination. The Company shall also submit processing fees to the Licensor for each Supplemental Site License, which fees are non-refundable, are comparable to Licensor's fees for similar permits, and may be modified in the future to be consistent with fees then imposed on like activities. The foregoing fees include up to [_____] (____) hours of inspection by the Licensor. If the Licensor reasonably requires additional inspection beyond [_____] (____) hours then Company agrees to pay for such inspections at the rate of [\$__.00] per hour or at such rate as may be charged by the Licensor for similar inspections in the future. The Company shall also submit such other information as may be reasonably requested by the Licensor.
- 3.2 Permitted Use of PROW. PROW may be used by the Company, seven (7) days a week, twenty-four (24) hours a day, only for the Wireless Sites and attachment, installation, maintenance, upgrade, removal, reattachment, reinstallation, relocation, replacement, use and operation of WCFs and not for any other purpose. It is understood that the purpose for installing WCFs at designated Wireless Sites in the PROW is to augment Network capacity otherwise provided through the installation of other facilities, such as traditional tower structures and fiber backhaul. This Agreement shall include new types of WCFs that may evolve or be adopted using wireless technologies.
- 3.3 Application and Approval of Wireless Sites.
- 3.3.1. The Company shall file with the Licensor Supplemental Site Licenses for proposed Wireless Sites for which the Company is seeking administrative approval. A single Supplemental Site License may seek authority for up to ten (10) WCFs under this Agreement. The request must include information on (i) the Owner of the pole upon which the WCF is proposed to be installed; (ii) where poles are owned by a third party, a letter of authorization from the Owner of the poles confirming that Company has authority to make the requested attachment(s); and (iii) such other information as set forth on Exhibit A, which may, in the Licensor's sole discretion, be modified from time to time to meet the needs of the Licensor. If the WCF is proposed in rights-of-way owned by another governmental entity, a copy of the agreement authorizing the Company access to

that right-of-way is also required. Upon filing of a complete request for a Supplemental Site License, the Licensor shall process the request within twenty (20) business days, or within such other time as designated by Applicable Law. Notwithstanding the foregoing, if the Supplemental Site License request seeks permission to install or construct any WCFs that are not subject to administrative approval, the time in which the Licensor shall direct the Company to apply for the necessary land use permission shall be that period permitted under Applicable Law.

- 3.3.2 For installations, construction, operation, maintenance, and removal of WCFs, the Company shall obtain all generally applicable permits that are required of all occupants of the PROW in accordance with Applicable Law. The Licensor shall process all permit applications in a non-discriminatory and competitively neutral manner.
- 3.3.3 Upon finding that a request for a Supplemental Site License is complete, the Licensor will determine whether the location (and any existing pole) identified by the Company as a Wireless Site is within the PROW. If it is not, then, except as set forth in Section 3.3.1, the request would be outside the scope of this Agreement.
- 3.3.4 Modification. Notwithstanding anything in this Agreement to the contrary, modifications shall be subject to permitting required under Applicable Laws, but shall not be subject to additional Licensor approval, to the extent that: (i) such modification to WCFs involve only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the WCF, change in loading impacts on the pole as approved by the Licensor or impact to multi-modal traffic flow; or (ii) such modification involves replacement of the WCF with a WCF that is the same or smaller in weight and dimensions as the approved WCF and does not impact multi-modal traffic flow.
- 3.4 Utilities. The Company will be responsible for telephone, electric and any other utility service used or consumed by the Company in connection with its WCFs. In no event will the Company secure its utilities by sub-metering from the Licensor.
- 3.5 Duty to Minimize Interference. The Company shall not impede, obstruct or otherwise interfere with the installation, existence or operation of any other facility in the PROW, including but not limited to sanitary sewers, water mains, storm water drains, gas mains, traffic signals and/or utility poles, Licensor-owned street lights, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and Licensor networks, and other telecommunications, utility, or Public Property. All Company activities in the PROW shall be carried on as to minimize interference with the use of the PROW and with the use of private property, in accordance with all regulations of the Licensor necessary to provide for and protect public health, safety and convenience.
- 3.6 Relocations.

- 3.6.1. The Licensor shall have the right to require the Company and its customers to relocate, remove, replace, modify or disconnect WCFs located in the PROW for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, PROW vacation, PROW construction, change or establishment of PROW grade, installation of sewers, drains, electric lines, gas or water pipes, conduits, cables, or any other types of structures or improvements by the Licensor for public purposes). Such work shall be performed at the Company's expense. The Licensor also reserves the right to make full use of the property involved as may be necessary or convenient, and the Licensor retains all rights to operate, maintain, install, repair, remove, replace or relocate any of its facilities located within the Licensor's property at any time and in such a manner as it deems necessary or convenient. Except during an emergency, the Licensor shall provide reasonable notice to the Company, of not less than ninety (90) days, and allow the Company the opportunity to perform any relocation, removal, replacement, modification or disconnection of the WCFs located in the PROW. Following notice by the Licensor, the Company shall relocate, remove, replace, modify or disconnect any of its WCFs within any PROW. If the Licensor requires the Company to relocate its WCFs located within the PROW, the Licensor shall make a reasonable effort to provide the Company with an alternate location within the PROW. During such relocation, if necessary, in the Company's reasonable determination, and consistent with any applicable permit requirements, it may place a temporary installation in the PROW (*e.g.* cell-on-wheels).
- 3.6.2. If the Company fails to complete the relocation within the time prescribed and to the Licensor's satisfaction, the Licensor may remove the WCFs or otherwise cause such work to be done and bill the cost of the work to the Company, including all costs and expenses incurred by the Licensor due to the Company's delay. In such event, the Licensor shall not be liable for any damage to any portion of the Network other than damage caused by the Licensor's negligence or willful misconduct. The Company shall make full payment to the Licensor within thirty (30) days of receipt of an itemized list of such costs.
- 3.7 Duty to Repair. Any PROW, Public Property or private property that is disturbed or damaged during, or as a result of, the construction, reconstruction, repair, replacement, removal, relocation, operation or maintenance of any WCFs by the Company or its agents or contractors shall be promptly repaired by the Company at its sole expense.
- 3.8 Inventory of Wireless Sites. The Company shall maintain a current inventory of Wireless Sites throughout the Term. Upon written request of the Licensor, which request may be made once and is not required to be made annually, the Company shall provide to the Licensor a copy of the inventory of Wireless Sites by December 31st of each year until the end of the Term. The inventory shall include roadway intersection (if applicable), GIS coordinates, date of installation, the Company Site ID #, type of pole used for installation, pole Owner, and description/type of installation for each Wireless Site WCF installation. Concerning Wireless Sites that become inactive, the inventory

shall include the same information as active installations in addition to the date the Wireless Site was deactivated and the date the WCF was removed from the PROW. The Licensor will compare the inventory to its records to identify any discrepancies.

- 3.9 Unauthorized Installations. If there are any unauthorized Wireless Sites identified by the Licensor as a result of comparing the inventory of Wireless Sites to internal records or through any other means, the Licensor shall provide written notice to the Company of such unauthorized Wireless Site and the Company shall have thirty (30) days thereafter in which to submit an application request for a Supplemental Site License for that location, or alternatively to remove the WCFs and restore the property at the Company's expense. If the Company fails to submit a request for a Supplemental Site License, or if the request is denied, the Company shall remove the WCFs from the PROW and restore the property at its expense within thirty (30) days, unless a different time period is agreed to by the parties. If the request is approved, the Company must pay the required fees for a new WCF site plus interest at the rate of two percent (2%) per annum from the date of the original installation.

3.10 Signal Interference Prohibited.

- 3.10.1 Notice; Company Response. In the event any WCFs interfere with the Licensor's traffic signal system, public safety radio system, or other Licensor communications infrastructure operating on spectrum where the Licensor is legally authorized to operate, the Company will respond to the Licensor's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving such request, pursuant to protocol outlined in Section 3.10.2 below, and shall follow the escalation process outlined in Section 4 of this Agreement.

- 3.10.2 Response Protocol. The protocol for responding to events of interference will require the Company to provide the [INSERT TITLE OF PERSON TO RECEIVE NOTICE, SUCH AS DIRECTOR OF PUBLIC WORKS] an interference remediation report that includes the following items:

3.10.2.1 Remediation Plan. Devise a remediation plan to stop the event of interference;

3.10.2.2 Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and

3.10.2.3 Additional Information. Include any additional information relevant to the execution of the remediation plan.

- 3.10.3 Removal; Relocation. In the event interference with Licensor's facilities cannot be eliminated, the Company shall shut down the WCFs and pursuant to Section 3.6 remove or relocate any WCF that is the source of the interference to a suitable alternative location.

SECTION 4. EMERGENCY CONTACTS

- 4.1 Coordination of Emergency Events. In case of an emergency due to interference, failure of traffic signal or utility systems, or any unforeseen events, the Licensor will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. The Licensor will make every reasonable effort to coordinate its emergency response with the Company. To that end, the Licensor will use the following emergency contacts:
- 4.1.1 Level One Contact: The Company's network operations center may be reached 24/7 at: 877-244-7889 and email: mnoc@mobilitie.com.
- 4.1.2 Level Two Contact: In the event the Company's network operations center cannot be reached, or the network operations center staff cannot address the emergency situation, the Licensor may contact:
- Gail Allen Manager, Operations
Phone: 702-777-4508
Email: GAllen@mobilitie.com or
- Nam Kang, Sr. Director Network Operations
Phone: 312-638-5409
Email: nam@mobilitie.com
- 4.1.3 Level Three Contact: In the event the emergency situation calls for a coordinated effort between the Licensor's and Company's management team, the Licensor may contact:
- Scott Holt, VP, Network Operations
Phone: 206-510-4658
Email: scott.holt@mobilitie.com
- 4.2 Company's Duty to Maintain Current Emergency Contacts. The Company shall maintain the emergency contact information current at all times with the *[INSERT TITLE OF CITY CONTACT]*.
- 4.3 Company's Response to Network Emergency. In case of a Network emergency due to any unforeseen event, the Company may access its Wireless Sites and WCFs without first obtaining a PROW permit provided the Company has conducted Network troubleshooting and diagnostic tests and has reasonably identified the point or points of Network failure or malfunction. While acting under this provision to address a Network emergency, the Company shall conduct its activities within the PROW in such a manner as to protect public and private property and to provide the necessary traffic control. The Company will make every reasonable effort to coordinate its emergency response with the Licensor. To that end, prior to entering the PROW, the Company will use the following emergency contacts to give notice to the Licensor of the Network emergency and an estimated time period to address the situation:

The Licensor's public safety communications dispatch may be reached 24/7 at: [INSERT CITY, TOWN OR COUNTY TELEPHONE NUMBER] and electronically at [INSERT CITY, TOWN OR COUNTY EMAIL ADDRESS].

If contact cannot be made with the Licensor in this manner, the Company shall call 9-1-1.

- 4.4 Licensor's Duty to Maintain Emergency Contacts. The Licensor shall maintain the emergency contact information current at all times with Company's network operations contact.

SECTION 5. INDEMNITY AND INSURANCE

5.1 Indemnity.

- 5.1.1 The Company shall indemnify, defend and hold the Licensor, its employees, officers, elected officials, agents and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the WCFs, any of its or its customers' activities on any Wireless Site, or the Company's breach of any provision of this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or willful misconduct of the Licensor or an Indemnified Party.
- 5.1.2 The Indemnified Party shall give the Company timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding in connection with any WCFs. In the event such claim arises, the Indemnified Party shall tender the defense thereof to the Company and the Company shall consult and cooperate with the Licensor Attorney's Office while conducting its defense. The Licensor and the Indemnified Party shall cooperate fully therein with Company's legal representative and shall be consulted on any settlements of claims prior to the execution of any settlement agreements.
- 5.1.3. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Indemnified Party and the counsel selected by Company to represent the Indemnified Party, the Company shall pay for all reasonable expenses incurred by the Indemnified Party as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the Indemnified Party shall select its own counsel and any other experts or consultants, subject to the Company's prior approval. The Indemnified Party's expenses hereunder shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Indemnified Party's attorney or his/her assistants or any employees of the Indemnified Party or its agents but shall not include outside attorneys' fees for services that are

unnecessarily duplicative of services provided the Indemnified Party by the Company.

- 5.1.4 Neither party will be liable under this Agreement for consequential, indirect, special, incidental or punitive damages for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

5.2 Insurance.

- 5.2.1 The Company shall carry during the Term, at its own cost and expense, the following insurance: (i) commercial general liability insurance with a minimum limit of liability of \$2,000,000 per occurrence and \$4,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (ii) excess or umbrella liability on an occurrence basis in excess of the commercial general liability insurance, which has coverage as broad as such policy, with a limit of not less than \$2,000,000; (iii) Workers' Compensation Insurance as required by law; and (iv) employers' liability insurance with minimum limits of \$500,000 bodily injury each accident, \$500,000 bodily injury each disease, and \$500,000 bodily injury disease aggregate. Notwithstanding the foregoing, the Licensor may increase the aforementioned minimum limits of insurance at any time in its sole discretion. The Company shall require each of its contractors to adhere to these same requirements or shall insure the activities of the contractors in the Company's insurance policies.
- 5.2.2 All of the insurance coverages identified in Section 5.2.1, except the workers' compensation insurance, shall apply to and name the Licensor as an additional insured, and shall provide a defense and indemnification to the Licensor regardless of the Licensor's fault or wrongdoing. The insurance shall indemnify and defend the Licensor against all loss, damage, expense and liability arising out of or in any way connected with the performance of this Agreement. Each of such insurance coverages shall contain a waiver of subrogation for the Licensor's benefit. Further, the insurance coverages identified in Section 5.2.1 will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the Licensor.
- 5.2.3 Upon execution of this Agreement and upon any subsequent request of the Licensor, the Company shall provide the Licensor with a Certificate of Insurance and any endorsements or copies of policies determined by the Licensor to be necessary to provide evidence of the coverage required by this Section 5.2.
- 5.2.4 The Company shall provide thirty (30) days advance notice to the Licensor in the event of cancellation of any coverage or modification of any coverage such that it is no longer compliant with this Section 5.2.

- 5.2.5 All of the primary insurance policies Company, and its contractors to the extent applicable under Section 5.2.1, are required to maintain in this Section 5.2 shall be obtained from insurance carriers having an A.M Best rating of at least A-X, and each excess insurance policy shall be obtained from an insurance carrier having an A.M. Best rating of at least A-VIII.

SECTION 6. DEFAULT AND REMEDIES

- 6.1 Notice of Violation. The Licensor shall provide the Company with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which the Company may: (i) demonstrate that a violation does not exist, (ii) cure the alleged violation, or (iii) if the nature of the alleged violation prevents correction thereof within thirty (30) days, to initiate a reasonable plan of action to correct such violation (including a projected date by which it will be completed) and notify the Licensor of such plan of action.
- 6.2 Default. If the Company fails to disprove or correct the violation within thirty (30) days, or, in the case of a violation which cannot be corrected in thirty (30) days, the Company has failed to initiate a reasonable plan of corrective action and to correct the violation within the specified time frame in such plan, then the Licensor may declare in writing that the Company is in default.
- 6.3 Bankruptcy. The parties expressly agree and acknowledge that it is their intent that in the event the Company shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. 101, *et seq.* (the "Code"), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any Person to which the Company's rights, duties and obligations under this Agreement are assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Company arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Licensor an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the Licensor, shall be the exclusive property of the Licensor, and shall not constitute property of the Company or of the estate of the Company within the meaning of the Code. Any monies or other considerations constituting the Licensor's property under the preceding sentence not paid or delivered to the Licensor shall be held in trust for the benefit of the Licensor and be promptly paid to the Licensor.
- 6.4 Hearing Available to Company. Within fifteen (15) days after receipt of a written declaration of default from the Licensor, the Company may make a written request for a hearing before the [INSERT COUNCIL OR BOARD AS APPLICABLE] or its designee, in a public proceeding affording due process. If a hearing is not requested, the Licensor may seek any remedy available under Applicable Law. If a hearing is requested, such

hearing shall be held within sixty (60) days of the receipt of the request therefor and a decision rendered within fifteen (15) days after the conclusion of the hearing. Upon a finding of default, the [INSERT COUNCIL OR BOARD AS APPLICABLE] or its designee may impose remedies of revocation and/or recovery of actual damages caused by such breach. Any decision shall be in writing and shall be based upon written findings of fact as contained in the record of the hearing.

- 6.5 Appeal of Default. The Company may appeal a finding of default and/or imposition of remedies by the [INSERT COUNCIL OR BOARD AS APPLICABLE] or its designee, which appeal shall be pursuant to C.R.C.P. 106 and based upon the written record. Alternatively, the parties may, by mutual agreement, agree to address the finding of default through arbitration or mediation.

SECTION 7. AMENDMENT AND RENEWAL

- 7.1 Amendment. Written requests to amend this Agreement for any purposes may be made by either party. The parties shall engage in good faith discussions and endeavor to reach agreement within sixty (60) days of receipt of such written request. Any amendment shall become effective after being duly executed by both parties. Notwithstanding the foregoing, nothing shall require either party to agree to any amendment request.

- 7.2 Renewal.

- 7.2.1 Unless earlier terminated by either party pursuant to the provisions of this Agreement, the Company may request a renewal of this Agreement, by providing six (6) months written notice of the intent to renew prior to the expiration date of the Agreement. After providing such notice, this Agreement shall renew on the same terms and conditions as herein for one (1) successive term of five (5) years, provided that the Company has complied with the material terms of this Agreement. If the Licensor does not believe that the Company is entitled to renewal as requested, the Licensor shall provide written notification to the Company at least ninety (90) days prior to the expiration date of this Agreement, in which notice the Licensor shall provide support for its position.
- 7.2.2 As between the Licensor and the Company, the Company shall at all times retain ownership of the WCFs, unless an alternative vertical structure, such as a street light, has been purchased by the Company and ownership assigned to the Licensor, pursuant to this Agreement. Upon expiration or non-renewal of this Agreement, within forty-five (45) days of the expiration of the then-current Term, the Company shall be permitted to remove its WCFs installed within the PROW, or alternatively, sell the same to a qualified buyer consistent with Applicable Law. In no event may Company abandon in place any of its WCFs installed in or on the PROW, unless written consent of the Licensor is obtained.

SECTION 8. ASSIGNMENT/TRANSFER OF OWNERSHIP OR CONTROL

- 8.1 Definitions. In this Section, the following words have the meanings indicated:
- 8.1.1 “Control” means actual working control in whatever manner exercised. “Control” includes, but may not necessarily require, majority stock ownership or control of 51% or more of the voting rights in the Company.
- 8.1.2 “Proposed Transferee” means a proposed purchaser, transferee, lessee, assignee or Person acquiring ownership or control of this Agreement or of the Company.
- 8.2 No Transfer. Subject to Section 2.9, the Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, this Agreement, any Supplemental Site License as provided for herein, or any of the rights or privileges therein granted, without the prior consent of the Licensor, except that such consent shall not be required for a transfer or assignment to an Affiliate. The consent required by the Licensor may be conditioned upon the performance of those requirements necessary to ensure compliance with the obligations of this Agreement. The Company shall provide no less than thirty (30) days written notice to the Licensor of the details of any transaction described herein that requires Licensor consent. Once the Company obtains Licensor consent to transfer or assign this Agreement to a third party as required under this Section, the Company shall be authorized to transfer each Supplemental Site License to such third party without further consent or approval. Notwithstanding anything to the contrary in this Section, no Licensor consent is required for transfers to non-Affiliates that are currently operating in the Licensor and are in full compliance with all obligations to the Licensor. The Company shall provide no less than thirty (30) days written notice to the Licensor of a transaction covered in this Section to a non-Affiliate that it believes is compliant with its obligations to the Licensor.
- 8.3 Company Control. The requirements of Section 8.2 shall also apply to any change in Control of the Company. A rebuttable presumption that a transfer of Control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty-one percent (51%) or more of the voting shares of the Company. The consent required (other than with respect to Affiliates and non-Affiliates that are currently operating in the Licensor and are in full compliance with all obligations to the Licensor) may be conditioned upon the performance of those requirements necessary to ensure compliance with the specific obligations of this Agreement imposed upon the Company by the Licensor. For the purpose of determining whether it should consent to transfer of Control, the Licensor may inquire into the qualifications of the proposed transferee and the Company shall assist the Licensor in the inquiry.
- 8.4 Required Information. In seeking the Licensor’s consent to any change in ownership or control for which prior consent is required under Sections 8.2 and 8.3, the Company shall require the Proposed Transferee to indicate whether it:
- 8.4.1 Has ever been convicted or held liable for acts involving deceit including any violation of Applicable Laws, or is currently under an indictment, investigation or complaint charging such acts;

- 8.4.2 Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;
- 8.4.3 Has pending any material legal claim, law suit, or administrative proceeding arising out of or involving a network and/or equipment similar to that contemplated by this Agreement, except that any such claims, suits or proceedings relating to insurance claims, theft of service, or employment matters need not be disclosed;
- 8.4.4 Is financially solvent by submitting financial data including financial statements that are audited or reviewed by a certified public accountant who may also be an officer of the parent corporation along with any other data that the Licensor may reasonably require; and
- 8.4.5 Has the financial and technical capability to enable it to maintain and operate the Network and Wireless Sites and WCFs for the remainder of the Term.
- 8.5 Company's Compliance with Terms. In seeking the Licensor's consent to any change in ownership or control, the Company shall indicate whether it has failed to comply with any material provision of this Agreement at any point during the term of this Agreement.
- 8.6 No Waiver. The consent or approval of the Licensor to transfer by the Company does not constitute a waiver or release of the rights of the Licensor in or to its PROW, and any transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement.
- 8.7 Agreement Binding. Any sale, transfer or assignment of this Agreement will bind the successor in interest to the terms of this Agreement.
- 8.8 Pledge of Assets. Notwithstanding anything contained in this Agreement, the Company may pledge the assets of the Network and WCFs for the purpose of financing provided that such pledge of assets shall not impair the Company or mitigate the Company's responsibility and capability to meet all its obligations under the provisions of this Agreement.
- 8.9 The Licensor and the Company agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain WCFs deployed by Company in the PROW pursuant to this Agreement may be owned and/or operated by Company's third-party wireless carrier customers ("Carriers") and installed and maintained by Company pursuant to license agreements between Company and such Carriers. Such WCFs shall be treated as Company's WCFs for all purposes under this Agreement provided that (i) Company remains responsible and liable for all performance obligations under the Agreement with respect to such WCFs; (ii) Licensor's sole point of contact regarding such WCFs shall be the Company; and (iii) Company shall have the right to remove and relocate the WCFs. Such WCFs are subject to Applicable Law, and the Company shall indemnify the Licensor and hold it harmless from any claims from Carriers related to any action taken by the Licensor with respect to the facilities in accordance with Applicable Law. Should the Company's agreement(s) with any Carriers related to any WCFs cease,

the Company shall provide the Licensors with notice of such termination and contact information for the owners of the WCFs at least ten (10) business days prior to such termination.

SECTION 9. MISCELLANEOUS

9.1 Severability. If any Applicable Law renders any provision of this Agreement invalid, the remaining provisions of the Agreement shall remain in full force and effect.

9.2 Force Majeure. The Company shall not be deemed to be in default, non-compliance, or in violation of any provision of this Agreement where performance was hindered or rendered impossible by war or riots, civil disturbances, natural catastrophes or other circumstances beyond the Company's control, provided the Company took steps to mitigate damages and accepts responsibility to cure the default, non-compliance or violation in a manner and within a time period reasonably acceptable to the Licensors.

9.3 No Waiver.

9.3.1 The failure of either party on one or more occasions to exercise a right or to require compliance or performance under this Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by such party, unless such right or such compliance or performance has been specifically waived in writing.

9.3.2 Both the Licensors and the Company expressly reserve all rights they may have under Applicable Law to the maximum extent possible, and neither the Licensors nor the Company shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.

9.4 Attorney Fees. Should any dispute arising out of this Agreement lead to arbitration or litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

9.5 Change of Law. If any Applicable Law that governs any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date and such change preempts compliance with or the enforcement of any aspect of such rights or obligations, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

9.6 Notice. All notices that shall or may be given pursuant to this Agreement must be in writing and delivered by hand or (i) through the United States mail, by registered or certified mail; (ii) by prepaid overnight delivery service; or (iii) by email transmission. If a hard copy of the same is delivered through the U. S. Postal Service or by overnight delivery service, it shall be delivered to the following addresses:

if to Licensors:

_____ of _____

_____, CO _____

ATTN: [TITLE OF PARTY TO WHOM NOTICE IS SENT]

with a copy to:

_____ of _____

_____, CO _____

ATTN: [TITLE OF PARTY TO WHOM NOTICE IS SENT]

if to Company:

Mobilitie, LLC
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660
Attention: Legal Department

with a copy to:

Mobilitie, LLC
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660
Attention: Asset Management

Each party shall provide timely notice to the other of changes in the address for notification under this provision. Notice shall be deemed effective upon receipt in the case of hand delivery, three days after delivery to the U.S. Postal Service, or the next business day if delivery is effectuated by email or overnight delivery service.

- 9.7 Representations and Warranties. Each party to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its respective obligations hereunder and that such obligations shall be binding upon it without the requirement of the approval or consent of any other person or entity in connection herewith.
- 9.8 Amendment. This Agreement may not be amended except pursuant to a written instrument signed by both parties.
- 9.9 Other PROW Users. The parties understand and agree that the Licensor permits other persons and entities to install utility facilities in the PROW. In permitting such work to be done by others, the Licensor shall not be liable to Company for any damage caused by those persons or entities.
- 9.10 Entire Agreement. This Agreement and all attachments hereto (including Supplemental Site Licenses) represent the entire understanding and agreement between the parties

hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

- 9.11 Laws Governing/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. Venue for any proceeding brought pursuant to this Agreement shall be in the District Court located in [_____] County, Colorado.
- 9.12 No Third-Party Beneficiaries. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.
- 9.13 Counterparts; Electronic Disposition. This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. Regardless of the number of counterparts, all shall constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.
- 9.14 Public Disclosure. The Company acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, C.R.S. § 24-72-202(6), and accordingly may be disclosed to the public.
- 9.15 Consents. To the extent either party is required hereunder to obtain the consent or approval of the other under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

[Signature page follows.]

*[Signatures on WIRELESS COMMUNICATIONS FACILITIES
MASTER LICENSE AGREEMENT.]*

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

_____ OF _____

By: _____
Name: _____
Its: _____
Date: _____

APPROVED AS TO FORM

BY: _____
_____ Attorney
Name: _____
Title: _____

MOBILITIE, LLC

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT A

SUPPLEMENTAL SITE LICENSE

This Supplemental Site License, made this _____ day of _____, 20____ (“Effective Date”) between the _____ of _____, hereinafter designated “Licensor,” and Mobilitie, LLC, hereinafter designated “Company”:

1. Supplemental Site License. This is a Supplemental Site License as referenced in that certain Wireless Communications Facilities Master License Agreement in connection with the operation of Company’s Network, between Licensor and Company dated _____, 201_ (the “Agreement”). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplemental Site License, the terms of this Supplemental Site License shall govern. Capitalized terms used in this Supplemental Site License shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. Project Description and Locations. As described herein, Company shall have the right to use the Licensor-owned structure, other vertical structure owned by a third party or a newly constructed vertical structure for WCF at the Wireless Site in the PROW as further described in Attachment 1, Table 1 attached hereto.
3. WCF Equipment. The WCFs to be installed at the Wireless Site are described in Attachment 1, Table 2 attached hereto.
4. Term. The term of this Supplemental Site License shall be as set forth in Section 2.3 of the Agreement.
5. Fees. If this Supplemental Site License is for attaching WCFs to Licensor-owned structures in the PROW, the initial annual attachment fee shall be \$200.00 (“Attachment Fee”). Such annual Attachment Fee shall not be applicable to street lighting poles approved for street lighting purposes by the Licensor that are purchased by the Company and assigned to the Licensor pursuant to Section 2.2(iii) of the Agreement.
6. Commencement Date. The commencement date of this Supplemental Site License is the first day of the month following the date Company has commenced installation of its WCFs at the Wireless Site.
7. Approvals. It is understood and agreed the Company’s ability to use the Wireless Site is contingent upon its obtaining all of the certificates, permits and other approvals (collectively the “Governmental Approvals”) that may be required by any Federal, State or Local authorities. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Company is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Company determines that such Governmental Approvals may not be obtained in a timely manner; or (iv) Company

determines one or more licensed Wireless Sites is no longer technically compatible for its use, Company shall have the right to terminate all or part of this Supplemental Site License. Notice of Company's exercise of its right to terminate shall be given to Licensor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Company, or upon such later date as designated by Company. All fees paid to said termination date shall be retained by Licensor. Upon such termination, all or part of this Supplemental Site License, as applicable shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder and in the Agreement. Otherwise, Company shall have no further obligations for the payment of any Attachment Fee to Licensor.

[Signature page follows.]

[Signature page for Supplemental Site License.]

EXECUTED to be effective as of the date shown above.

LICENSOR:

_____ OF _____

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

BY: _____

_____ Attorney

Name: _____

Title: _____

COMPANY:

MOBILITIE, LLC

By: _____

Name: _____

Its: _____

Attachments:

Attachment 1

ATTACHMENT 1

Table 1

WIRELESS SITE ID NO.	STREET NAME/INTERSECTION AND QUADRANT POLE IS LOCATED ON	STATE PLANE COORDINATES		EXISTING POLE TYPE	EXISTING POLE HEIGHT
		Easting (X)	Northing (Y)		

Table 2

WIRELESS SITE ID NO.	PROPOSED POLE ALTERATION	RESULTANT POLE HEIGHT	TYPE OF EQUIPMENT ATTACHED

COMPANY SHALL PROVIDE THE FOLLOWING AS IS APPLICABLE TO BE CONSIDERED BY LICENSOR IN WHETHER TO GRANT THE SUPPLEMENTAL SITE LICENSE:

1. Plot plan, engineering design, and specifications for installation of the Wireless Communication Facility, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, electrical conduit and cabling, and all other associated equipment. Where applicable, the design documents shall include specifications on design, pole modification, and ADA compliance.
 - a. The plot plan shall show existing sidewalk size, existing utilities, existing trees, traffic control signs and equipment, and other existing improvements.
2. For Licensor poles, include documentation from the Licensor verifying the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate attachment of the Wireless Communication Facility. If pole reinforcement or replacement is warranted, the design documents shall include the proposed pole modification.
3. For new pole installations, include documentation verifying the pole location is in the PROW and is eligible for installation. Include list of adjacent property owners. If the proposed installation includes a new pole, provide design and specification drawings for the new pole.
4. If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specification drawings.
5. The number, size, type, and proximity to the facilities of all communications conduit(s) and cables to be installed.
6. Description of the utility services required to support the facilities to be installed.
7. A typewritten legal description with (1) the Section, Township and Range, and County being affected, and if it is part of a subdivision, it shall be stated also; (2) the Point of Beginning to an established land corner or to a subdivision plat that is tied to an established land corner, with curves showing radius, delta, arc length and angle to radius point if curve is non-tangent, and area to be included in square feet; and (3) the legal description SIGNED and SEALED by a surveyor registered in the State of Colorado.
8. For Licensor-owned poles, provide information required by Exhibit B of the Agreement.

EXHIBIT B

ATTACHMENTS TO LICENSOR-OWNED TRAFFIC SIGNAL FACILITIES

[To be included and/or modified at Licensor's request to be consistent with Licensor's policies and/or ordinances. The sample language below reflects the traffic signal attachment policies of Aurora, Colorado.]

Traffic Signal Pole Requirements

Traffic signal poles already supporting police equipment are not eligible to be considered for Company's WCF. Company's WCF placed on traffic signal poles may be required to be relocated at any time if the Licensor-owned infrastructure is needed for placement of police equipment.

Traffic signal poles are engineered structures designed to specific loading criteria and required AASHTO standards. Modifications to the loading will require an engineering analysis stamped by a Colorado licensed professional engineer.

Installations on traffic signal poles cannot alter the poles in any way. Therefore, all attachments must be banded. Drilling and taping is not allowed.

All cabling must be external to the pole to eliminate the possibility of interference with existing signal cables and conductors.

Cables, conduits and bands must not interfere with access to or operation of any of the traffic signal equipment. Specific clearances may be required and will be reviewed on a case-by-case basis.

Analysis must be provided to show the proposed equipment will not interfere with the Licensor's wireless network operating in the 900 MHz and 5.8 GHz frequencies.

For installations on traffic signal poles, involved personnel must hold at least a Level I IMSA Traffic Signal certification (level II preferred) to demonstrate comprehension of the implications of any negative impacts to the Licensor's traffic signal infrastructure.

Any installation or servicing of WCF located on traffic signal poles shall be coordinated with the Licensor's Traffic Operations and Traffic Engineering groups a minimum of three business days in advance.

CCUA Template
September 14, 2017

WCF located on traffic signal poles may be required to be removed and/or reset at any time at the sole cost of the Company due to any work performed by or authorized by the Licensor.

EXHIBIT C

TECHNICAL REQUIREMENTS

This Exhibit C sets forth additional technical requirements as a supplement to the Agreement between Licensor and Company. Terms not defined herein shall have the definitions set forth in the Agreement to which this Exhibit C is attached.

1. Irrespective of Company's rights, if any, under 47 U.S.C. § 1455(a) (codifying Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012) and the FCC's implementing regulations thereunder, including 47 C.F.R. § 1.40001, Company shall not, (i) unless otherwise agreed to by the parties in a Supplemental Site License and (ii) unless the Company obtains any additional, required permitting and land use approval in accordance with Applicable Law:
 - a. install a pole in the PROW with a height in excess of _____ feet;
 - b. increase or seek to increase the height of any pole in the PROW to a total height in excess of _____ feet, except that the Company may increase the height of a distribution pole by up to an additional _____ feet to the extent required by Applicable Law or industry standards for the placement of WCFs on the top of a distribution pole; or
 - c. install at ground level equipment shelters or cabinets or electrical distribution panels, except, in each case after all reasonable alternative pole locations and underground locations have been explored and found unavailable or lacking in some substantial way.

The Licensor shall weigh requests by Company to include any of the foregoing in a Supplemental Site License in light of the Licensor's historic preservation policies, aesthetic considerations, pedestrian, disabled person and/or bicyclist access to sidewalks, public safety concerns, technical installation conflicts, and compliance with Applicable Law.

2. Nothing in this Agreement shall be interpreted to authorize the installation of macro wireless communications service facilities, macro base stations, or similar high-powered cellular facilities in the PROW, or the installation of macro wireless towers, or poles intended for macro facilities.
3. Wireless Sites shall be installed within the footprint of an area of no more than thirty-six (36) square feet.